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tion between the States and with foreign countries would be seriously hampered and impeded". But how about the lack of uniformity under *Sherlock v. Alling*, supra, and *The Hamilton*, supra?

The court in determining whether State law shall stand as against or along with the maritime law, applies the same tests that are applied when the question is between State action and the national control over interstate commerce. In this connection it is interesting to refer to *The New York Central Railroad Company v. Winfield*, decided the same day, where it was held, Mr. Justice BRANDEIS and Mr. Justice CLARKE dissenting, that the COMPENSATION ACT of New York did not apply to non-tortious injuries to employees of the company, although the FEDERAL EMPLOYERS' LIABILITY ACT covers only negligent injuries. It apparently was conceded by all that but for the Federal Act the State statute would apply to employees engaged in interstate commerce as well as to those not so engaged. Congress, however, having acted, the State action was displaced. R.W.A.

RELETTING ON ABANDONMENT BY TENANT AS SURRENDER BY OPERATION OF LAW.—Among the very many difficult problems arising under the STATUTE OF FRAUDS not the least troublesome has been that of surrender of estates by "operation of law." The Statute (29 Car. II, c.3,§3,) provided that "no leases * * * shall * * * be assigned, granted, or surrendered, unless it be by deed or note in writing, * * * or by act and operation of law." Under a number of varying situations it has been held that a surrender by operation of law had been accomplished. See 2 TIFFANY, LANDLORD AND TENANT, §190. In *Lyon v. Reed*, 13 M. & W. 285, Baron PARKE, after referring to a number of such situations, said: "It is needless to multiply examples; all the old cases will be found to depend on the principle to which we have adverted, namely, an act done by or to the owner of a particular estate, the validity of which he is estopped from disputing, and which could not have been done if the particular estate continued to exist. The law there says, that the act itself amounts to a surrender. In such case it will be observed there can be no question of intention. It takes place independently, and even in spite of intention."

Perhaps the most common situation giving rise to a claim of surrender by operation of law is the re-letting of the premises to a new tenant after a lessee has abandoned them before the end of his term, notice of intention to continue to look to the original lessee to make up deficiencies, if any, sometimes being given and sometimes not. Whatever may be said as to the proper holding on sound legal reasoning, it is certainly true that the courts are holding that such re-letting does not necessarily bring about a surrender by operation of law; particularly is this true where the lessor has given notice to the first lessee that the new lease is made on his account, or without prejudice to any claims against him on the original lease. *Rucker v. Mason* (Okla. 1916), 161 Pac. 195, 15 MICH. L. REV. 357; *Hickman v. Breadford* (Iowa 1917), 162 N. W. 53.

If such surrenders are, as said by Baron PARKE, founded upon estoppels and are wholly independent of intention, it would seem that cases of the above

character must be considered as incorrectly decided. The new lease must be taken, at least as between the parties thereto, as valid; but how can it be valid as against the lessor unless the first lease has somehow been gotten out of the way? Can he be allowed to say that he has two present leases of the same premises running along concurrently? But the courts are far from agreement with Baron PARKE's doctrine that intention has nothing to do with surrenders by operation of law. See *Van Renssalaer's Heirs v. Peniman*, 6 Wend. 569; *Smith v. Kerr*, 108 N. Y. 31, 15 N. E. 70; *Thomas v. Zumbalen*, 43 Mo. 471; *Johnson v. Northern Trust Co.*, 265 Ill. 263, 106 N. E. 814; *O'Neil v. Pearse*, 87 N. J. L. 382, 94 Atl. 312; *Auer v. Penn*, 99 Pa. 370. See also *Nichells v. Atherstone*, 10 Q. B. 944; *Zick v. London United Tramways, Limited* [1908], 2 K. B. 126. And that surrenders by operation of law do not necessarily rest upon estoppels at all is the opinion expressed in an interesting note in 5 IRISH JURIST 117. Cf. 2 TIFFANY, LANDLORD AND TENANT 1322.

But whether the true explanation is estoppel or necessary implication from certain facts not amounting to a technical estoppel, it is difficult to see how in the usual case of re-letting after abandonment by a tenant before the end of his term the old term can be said to be continuing. And the mere giving of notice to the old tenant that the new lease shall not act as a release of liability would seem to make no real difference. An agreement by the original lessee may well produce a different result. Whatever may be said as to the necessity for estoppel to bring about a surrender by operation of law, it would seem quite proper to say that where all the elements of an estoppel to assert the continuance of the relation of landlord and tenant are present there has been a surrender by operation of law. It is submitted that in the type of cases under discussion there is such an estoppel.

The prevailing doctrine undoubtedly is due very largely to a desire on the part of the courts to avoid imposing what seems to be a hardship upon the landlord. It should be noted that a lease can be very easily so worded that the lessor may be protected and at the same time avoid the difficulties herein referred to. See, however, *Whitcomb v. Brant* (N. J. 1917), 100 Atl. 175, where such a provision in a lease led to another very interesting difficulty, the lessor on re-letting getting a higher rent than provided for in the original lease. It was held that the lessor did not need to account to the first lessee for such excess.

R. W. A.

THE PATENTABILITY OF A MENTAL PROCESS.—The fact of possession has been so correlated with the theory of property that it is difficult to dissociate ownership from the possibility of physical possession. One finds that the average lawyer, even though he may define a right *in rem* as a right enforceable against any person, is extremely apt, unless after especial thought, to explain that it is enforceable against anyone because it pertains to a thing capable of physical possession and control, a thing that could be actually sequestered from all other persons. Not at all infrequently the term property has been judicially stripped even of its significance of a right, and con-